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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

ZACHARIAH DORSETT,

Respondent.

Case No. SC13-310

ON DISCRETIONARY REVIEW FROM THE
THE DISTRICT COURT OF APPEAL,
FOURTH DISTRICT OF FLORIDA

INITIAL BRIEF OF PETITIONER

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PRELIMINARY STATEMENT

This brief will refer to Respondent as such, Defendant, or by proper name, e.g., "Dorsett." Petitioner, the State of Florida, was the prosecution below; the brief will refer to Petitioner as such, the prosecution, or the State. Reference to the record on appeal will be by the symbol "R;" reference to the transcripts will be by the symbol "T;" reference to any supplemental record or transcripts will be by the symbols "SR" or "ST;" and reference to the Initial Brief, Answer Brief, and Reply Brief filed in the district court will be by the symbols "IB," "AB," and "RB" respectively, all followed by the appropriate volume and page numbers. For example page one of volume two of a third supplemental record would appear as (3SR2 1).

STATEMENT OF THE CASE AND FACTS

The District Court of Appeal, Fourth District, summarized the basic facts as follows:

> The defendant was driving a heavy pickup truck northbound on A1A. According to the defendant, he had his windows rolled up, windshield wipers and air conditioner on, and was listening to the radio at full volume. He saw a lot of people running across the street from the beach as it began to rain. The people had cleared the street as he drove through the intersection.
>
> According to the defendant, he was unaware that a young teenager had lost control of his skateboard and fell as he crossed the road, hitting the truck's

passenger side undercarriage. The defendant continued traveling north at a normal rate of speed and did not stop. He was not under the influence of drugs or alcohol, and had no hearing or health problems.

Law enforcement stopped the defendant approximately three miles from the accident. When questioned by law enforcement as to why he did not stop, the defendant explained:

> The bottom line is if I would have known I had hit somebody, I would have definitely stopped this truck; that's the bottom line. I didn't—there was no—at all but the radio and me driving; I didn't hear anything else, nothing was going on. I just found out about this person getting struck by my truck that I have no idea I had struck.

The State charged the defendant with leaving the scene of a crash involving injury. He entered a not guilty plea and proceeded to trial. There, the officer who stopped the defendant testified that the victim was on his rear end in the crosswalk when he was hit by the truck. The victim went underneath the truck and was dragged almost ninety feet. There was no evidence of braking, skid marks, brake lights, evasive steering, or a change in speed. There was no damage to the front of the truck.

Several witnesses testified that they saw the accident. One saw the truck's wheels go over the victim's body and heard the truck ride over him. A worker testified that he heard the accident from one of the upper floor patios of a building where he was installing windows; he saw the victim skateboard into the street, go underneath the truck, and be dragged down the street. His co-worker testified that he saw the skateboard being spit out from under the truck's right rear tire and heard the skateboard crack in two. He also saw the back right tire of the truck actually raise up or jump up.

Another eyewitness testified that she was in a car at the light when she heard a loud noise at impact

through her closed window. Another witness testified that he was about seventy-five to one hundred yards away from the road when he heard a loud thud and the sound of cracking wood. Yet another witness testified that she saw the victim fall off the skateboard and hit the right side of the truck.

A second officer testified that he pulled the defendant's vehicle over within minutes of the accident. The defendant immediately jumped out of the truck and appeared very nervous. He was visibly shaking and stuttering. The defendant repeatedly asked why he had been stopped. According to the second officer, the truck's windows were up, but the radio was not on.

The defense offered the following special jury instruction FN1 at the charge conference:

> To prove the crime of Leaving the Scene of an Accident, the State must prove the following four elements beyond a reasonable doubt:
>
> 1: [The defendant] was the driver of a vehicle involved in an accident resulting in injury to any person.
>
> **2: [The defendant] knew that he was involved in an accident.**
>
> 3:(a) [The defendant] knew of the resulting injury to the person; or
>
> (b) reasonably should have known of the resulting injury to the person from the nature of the accident.
>
> 4:(a) [The defendant] willfully failed to stop at the scene of the accident or as close to the accident as possible and remain there until he had given "identifying information"...; or

> (b) [The defendant] willfully failed to render "reasonable assistance" to the injured person if such treatment appeared to be necessary or was requested by the injured person.
>
> ....

(Emphasis added).

The defense also requested the following special jury instruction:

> The Defendant's knowledge that his car caused the personal injuries to [the victim] is a necessary element of the offense of failing to remain at the scene of an accident under Florida Statute Section 316.027.
>
> **Actual knowledge of the accident is an essential element of this crime, for one cannot "willfully" leave an accident without awareness that an accident has occurred.**
>
> Further, the State must prove that [the defendant] had actual or constructive knowledge of the resulting injury to [the victim]—that is, [the defendant] either knew of [the victim's] resulting injury, or reasonably should have known of such injury from the nature of the accident.

(Emphasis added). The trial court declined the special instructions and instead gave the standard jury instruction, which did not include the emphasized language. Fla. Std. Jury Inst. (Crim.) 28.4.

Dorsett v. State, 4D11-1530, 38 Fla. L. Weekly D233, 2013 WL 331602, *1-2 (Fla. 4th DCA January 30, 2013).

Florida Standard Jury Instructions in Criminal Cases §28.4, Leaving The Scene of Accident Involving Death or Injury, as read by the judge, states:

> To prove the crime of leaving the scene of a crash involving injury, the state must prove the following four elements beyond a reasonable doubt: Zachariah Dorsett was the driver of a vehicle involved in a crash resulting in injury to any person; number two, **Zachariah Dorsett knew or should have known that he was involved in a crash**; number three, Zachariah Dorsett knew or should have known of the injury to the person; and number four, Zachariah Dorsett willfully failed to stop at the scene of the crash or as close to the crash as possible and remain there until he had been - given identifying information to the injured person and to any police officer investigating the crash, or Zachariah Dorsett willfully failed to render reasonable assistance to the injured person if such treatment appeared to be necessary or was requested by the injured person. If the state proves that the defendant willfully failed to give any part if the identifying information or willfully failed to give reasonable assistance, the state satisfies this element of the offense. Identifying information means the name, address, vehicle registration number, and if available and requested the exhibition of the defendant's license or permit to drive. Reasonable assistance includes carrying or making arrangements to carry the injured person to a physician or hospital for medical treatment. Willfully means intentionally and purposely.

(R11 990) (Emphasis added)

Ultimately, the jury found Respondent guilty. The trial court adjudicated Respondent guilty and sentenced him to twenty-four months in prison.

Respondent appealed his conviction to the Fourth District in case number 4D11-1530. He raised a number of issues. The Fourth

District found merit in only one issue, the assertion that the trial court erred in not giving the requested special jury instructions. The Fourth District concluded that actual knowledge of the accident was required and that the jury should have been instructed of same. The Fourth District therefore reversed Respondent's conviction and remanded to the trial court for a new trial. However, recognizing that this was a case of first impression in Florida, the appellate court certified the following question to this Court as one of great public importance:

> In a prosecution for violation of section 316.027, Florida Statutes (2006), should the standard jury instruction require **actual** knowledge of the crash?

Dorsett, 2013 WL 331602 at *1. (Emphasis in original).

Petitioner, the State of Florida, petitioned this Court for discretionary review and the instant proceeding followed.

SUMMARY OF ARGUMENT

The trial court did not err in declining to give the requested special jury instructions where the standard instructions given accurately reflected the law applicable to the facts of this case, as per this Court's decision in State v. Mancuso, 652 So. 2d 370 (Fla. 1995). Therefore, this Court must quash the decision of the Fourth District and reinstate the Respondent's conviction.

ARGUMENT

ISSUE I: WHETHER, IN A PROSECUTION FOR VIOLATION OF SECTION 316.027, FLORIDA STATUTES (2006), ACTUAL KNOWLEDGE OF THE ACCIDENT IS REQUIRED?

In a prosecution for leaving the scene of an accident with injury, the law requires only that the defendant **knew or should have known** of the accident. Therefore, the appellate court's conclusion that the law requires actual knowledge of the accident, and that the jury must be instructed of same, was erroneous. The standard jury instructions given by the judge accurately stated the law. This Court must quash the appellate court's decision and reinstate the respondent's conviction for leaving the scene of an accident with injury.

A. Standard of Review.

Respondent asserted below, and the appellate court agreed, that the trial court erred in declining to give his requested special jury instructions and giving the standard jury instructions instead. The standard of review applied to a trial court's decision to give or withhold a jury instruction is normally abuse of discretion. See James v. State, 695 So. 2d 1229, 1236 (Fla. 1997) (noting that a trial court has wide discretion in instructing the jury). See also Booker v. State, 514 So. 2d 1079, 1085 (Fla. 1987) (defining "abuse of discretion" -- discretion is abused only where no reasonable man

could take the view adopted by the trial court). However, the issue upon which the appellate court's opinion turns, whether the statute requires actual knowledge of the crash itself such that the jury should be instructed accordingly, is a pure question of law which is to be reviewed de novo. Armstrong v. Harris, 773 So. 2d 7, 11 (Fla. 2000) (providing that "the standard of review for a pure question of law is de novo"). "The interpretation of a statute is a purely legal matter and therefore subject to the de novo standard of review." Kasischke v. State, 991 So. 2d 803, 807 (Fla. 2008), citing Kephart v. Hadi, 932 So. 2d 1086, 1089 (Fla. 2006), cert. denied, 549 U.S. 1216, 127 S.Ct. 1268, 167 L.Ed.2d 92 (2007). See also, Murray v. Mariner Health, 994 So. 2d 1051, 1056 (Fla. 2008) ("Statutory interpretation is a question of law subject to de novo review."). Therefore, this Court must apply de novo review.

B. The Merits.

Respondent asserted below that the trial court abused its discretion in giving the standard jury instructions because the law requires actual knowledge of the accident but the standard jury instructions permit a conviction upon proof that the respondent knew or should have known of the accident. The appellate court agreed, concluding that the crime of leaving the scene of an accident with injuries requires actual knowledge of the accident itself, and, therefore, Respondent's special jury

instructions regarding same should have been given. With all due respect to the appellate court, however, this interpretation of the statute is erroneous.

Section 316.027(1)(a), Florida Statutes (2006), defines the offense of leaving the scene of an accident with personal injury:

> The driver of any vehicle involved in a crash occurring on public or private property that results in injury of any person must immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and must remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062. Any person who willfully violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 316.062, Florida Statutes (2006), defines the duty to give information and render aid as follows:

> (1) The driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle or other property which is driven or attended by any person shall give his or her name, address, and the registration number of the vehicle he or she is driving, and shall upon request and if available exhibit his or her license or permit to drive, to any person injured in such crash or to the driver or occupant of or person attending any vehicle or other property damaged in the crash and shall give such information and, upon request, exhibit such license or permit to any police officer at the scene of the crash or who is investigating the crash and shall render to any person injured in the crash reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that

> treatment is necessary, or if such carrying is requested by the injured person.
>
> (2) In the event none of the persons specified are in condition to receive the information to which they otherwise would be entitled under subsection (1), and no police officer is present, the driver of any vehicle involved in such crash, after fulfilling all other requirements of s. 316.027 and subsection (1), insofar as possible on his or her part to be performed, shall forthwith report the crash to the nearest office of a duly authorized police authority and submit thereto the information specified in subsection (1).
>
> (3) The statutory duty of a person to make a report or give information to a law enforcement officer making a written report relating to a crash shall not be construed as extending to information which would violate the privilege of such person against self-incrimination.
>
> (4) A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

Florida Standard Jury Instructions in Criminal Cases §28.4, Leaving The Scene of Accident Involving Death or Injury, as read by the judge, states:

> To prove the crime of leaving the scene of a crash involving injury, the state must prove the following four elements beyond a reasonable doubt: Zachariah Dorsett was the driver of a vehicle involved in a crash resulting in injury to any person; **number two, Zachariah Dorsett knew or should have known that he was involved in a crash**; number three, Zachariah Dorsett knew or should have known of the injury to the person; and number four, Zachariah Dorsett willfully failed to stop at the scene of the crash or as close to the crash as possible and remain there until he had been - given identifying information to the injured person and to any police officer investigating the

> crash, or Zachariah Dorsett willfully failed to render reasonable assistance to the injured person if such treatment appeared to be necessary or was requested by the injured person. If the state proves that the defendant willfully failed to give any part if the identifying information or willfully failed to give reasonable assistance, the state satisfies this element of the offense. Identifying information means the name, address, vehicle registration number, and if available and requested the exhibition of the defendant's license or permit to drive. Reasonable assistance includes carrying or making arrangements to carry the injured person to a physician or hospital for medical treatment. Willfully means intentionally and purposely.

(R11 990) (Emphasis added). The trial court specifically rejected Respondent's interpretation of the statute and used the standard jury instructions provided by this Court to instruct the jury on the charge of leaving the scene of an accident involving death or injury. Stephens v. State, 787 So. 2d 747, 755 (Fla. 2001).

This case turns on statutory interpretation. Therefore, it is useful to set forth some general principles applicable to statutory interpretation. The goal of statutory interpretation is to give effect to the legislature's intent. State v. Gaulden, 1D11-4288, __ So. 3d __, 37 Fla. L. Weekly D867, 2012 WL 1216263, *1 (Fla. 1st DCA April 12, 2012), citing Kasischke v. State, 991 So. 2d 803, 807 (Fla. 2008)("When construing a statute, we strive to effectuate the Legislature's intent."). To determine that intent, we look first to the statute's plain language. Kasischke, 991 So. 2d at 807, citing Borden v. East-

European Ins. Co., 921 So. 2d 587, 595 (Fla. 2006). "[W]hen the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent." Kasischke, 991 So. 2d at 807, quoting Borden, 921 So. 2d at 595 and Daniels v. Fla. Dep't of Health, 898 So. 2d 61, 64 (Fla. 2005). Where a statute is ambiguous, the court may turn to legislative history and to other evidence of the purposes behind a statute. E.g., Kasischke, 991 So. 2d at 808-09. The court may also turn to canons of statutory construction such as "the doctrine of the last antecedent, under which 'relative and qualifying words, phrases and clauses are to be applied to the words or phrase immediately preceding, and are not to be construed as extending to, or including, others more remote.'" Kasischke, 991 So. 2d at 811, quoting City of St. Petersburg v. Nasworthy, 751 So. 2d 772, 774 (Fla. 1st DCA 2000). The rule of lenity is another canon of statutory construction but it is a canon of last resort, only to be applied where, after consulting traditional canons of statutory construction, a statute remains ambiguous. Kasischke, 991 So. 2d at 814, comparing favorably, Bautista v. State, 863 So. 2d 1180, 1185 n. 4 (Fla. 2003), in which the Court recognized that the rule of lenity does not apply where legislative intent to the contrary is clear.

It is also useful to set forth some general principles applicable to jury instructions. The Florida Supreme Court has jurisdiction to approve jury instructions for use in the courts of this state and may do so by adopting standard jury instructions for civil and criminal cases. See Perriman v. State, 731 So. 2d 1243, 1246 (Fla. 1999). The Florida Standard Jury Instructions were designed to eliminate or minimize juror confusion concerning the applicable law in criminal cases. Id. The standard instructions should be used to the extent applicable in the judgment of the trial court. Kearse v. State, 662 So. 2d 677, 682 (Fla. 1995). Where a Florida Standard Jury Instruction adequately apprizes the jury as to the law and evidence, it is proper for the trial court to give the standard instruction rather than a special or requested instruction. See Carpenter v. State, 785 So. 2d 1182, 1200 (Fla. 2001). Significantly, standard jury instructions are presumed to be correct and are preferred over special instructions. Stephens v. State, 787 So. 2d 747, 755 (Fla. 2001). See also Mogavero v. State, 744 So. 2d 1048, 1050 (Fla. 4th DCA 1999)(trial court should not give instructions which are confusing) and Butler v. State, 493 So. 2d 451, 452 (Fla. 1986) (court should not give instructions that are confusing or misleading).

Here, the standard instructions were correct and adequately stated the law as embodied by Section 316.027. See Johnson v.

State, 484 So. 2d 1347, 1350 (Fla. 4th DCA), rev. denied, 494 So. 2d 1151 (Fla. 1986) (trial court properly denied requested instruction where it was covered by standard instructions). The first part of the statute is written in mandatory language:

> The driver of any vehicle involved in a crash occurring on public or private property that results in injury of any person must immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and must remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062.

§ 316.027(1)(a), Fla. Stat. (2006). The standard jury instructions add the requirement that a defendant "knew or should have known" of the accident and of the injury. Fla. Std. Jur. Ins. 28.4

The second part of the statute, and of the standard jury instructions, use the word "willfully" in connection with the failure to stop and render aid, as follows: "Any person who willfully violates this paragraph commits a felony of the third degree." § 316.027(1)(a), Fla. Stat. (2006) The standard jury instructions state that "willfully" means intentionally and purposely. Fla. Std. Jur. Ins. 28.4

The "knew or should have known" language clearly is meant to relate to this first part of the statute; without this language regarding "knew or should have known" about the accident and that it caused injuries, the statute would be a strict liability statute. Construing the statute as a strict liability statute

would not effectuate the legislature's intent and satisfy the dictates of due process given that substantial prison terms could be imposed and given that one must be aware of an affirmative duty to act. Thus, the term "knew or should have known" is used in the beginning part of the jury instructions as follows: "number two, Zachariah Dorsett knew or should have known that he was involved in a crash; number three, Zachariah Dorsett knew or should have known of the injury to the person." Fla. Std. Jur. Ins. 28.4.

Including this language was actually to the defendant's favor since the knowledge requirement was not even expressly included in the statute in the first place, making it a strict liability statute indeed. This Court officially grafted that requirement of proof into the statute in the Mancuso case and into the standard jury instructions that sprang from that case. See State v, Mancuso, 652 So. 2d 370 (Fla. 1995); In Re Standard Jury Instructions in Criminal Cases (95-2), 665 So. 2d 212 (Fla. 1995). But, this Court was careful to use the word "should," not the word "could." By doing so, this Court and the committee that created the instruction, intended to address, not people who **could** have known, but people who knew or **should** have known. In other words, the difference between "could" and "should" excuses truly innocent actors, such as someone who got a concussion and, as a result was unaware of the accident or the injury. E.g.,

Martin v. State, 323 So. 2d 666 (Fla. 3d DCA 1976)(head injury could result in incapacity to form criminal intent and could result in affirmative defense).

It is only in the latter part of the statute that the word willful becomes relevant: "Any person who willfully violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. §316.027(1)(a), Fla. Stat. (2006). Thus, the term willfully is used in the latter part of the statute and consequently in the latter part of the jury instructions as follows: "number four, Zachariah Dorsett willfully failed to stop at the scene of the crash or as close to the crash as possible and remain there until he had been - given identifying information to the injured person and to any police officer investigating the crash, or Zachariah Dorsett willfully failed to render reasonable assistance to the injured person if such treatment appeared to be necessary or was requested by the injured person." Fla. Std. Jur. Ins. 28.4. Said another way, willfulness does not relate to knowledge there was an accident or injury; it only relates to whether someone deliberately failed to stop without rendering aid and giving information and assistance.

This is logical; if the phrase "knew or should have known" was intended to be equivalent to "willful" it would have been used throughout the standard jury instructions instead of the

word willful, or vice versa. Instead, the phrase "knew or should have known" is used in the former part of the instructions and "willful" is used in the latter part, indicating that they mean two different things and relate to several different elements.

It is well worth noting that the language of the statute is written in mandatory terms, using the words "must stop" and "must remain." Further, the statute also uses the term "willfully" which is defined by the standard instructions as "intentionally and purposely." Our case law states that the purpose of the statute is simply to assure that any injured person is rendered aid and that all pertinent information concerning insurance and the names of those involved in an accident is exchanged by the parties. Herring v. State, 435 So. 2d 865 (Fla. 3d DCA), cert. denied, 104 S.Ct. 549, 464 U.S. 1018, (1983). Clearly, the law imposes an affirmative, and mandatory, duty to stop, render aid, and provide certain information necessary for an insurance claim. However, in and of itself, the statute does not, and is not intended to, create criminal liability for any conduct which led up to the accident.

It is also well worth noting that the use of the phrase "should have known" is clearly intended to encompass situations such as willful blindness or ignorance and voluntary intoxication. As a matter of public policy, one should not be able to escape the duty to render aid and liability for failure

to render aid by claiming a lack of knowledge of the accident and/or injury due to willful blindness or willful ignorance or due to voluntary intoxication. Cf. Olguin v. State, 903 So. 2d 270 (Fla. 3d DCA 2005)(court rejected defendant's complaint that it was fundamental error to instruct the jury that voluntary intoxication was not a defense to charge of leaving the scene of an accident involving death as it negated element of knowledge). Also cf. Williams v. State, 505 So. 2d 478 (Fla. 2d DCA 1987)(appellate court affirmed trial court's denial of judgment of acquittal regarding appellant's affirmative defense of voluntary intoxication and upheld conviction for leaving the scene of an accident involving personal injuries).

After all one of the main purposes of the statute is to ensure that accident victims obtain medical assistance as soon as possible. State v. Dumas, 700 So. 2d 1223 (Fla. 1997), citing Herring v. State, 435 So. 2d 865, 866 (Fla. 3d DCA 1983)("It is apparent that the purpose of sections 316.027 and 316.063 is to assure that any injured person is rendered aid ... ."). See also Gaulden, 2012 WL 1216263 at *2 (court emphasized that their interpretation of the statute not only honored plain language of statute but also safeguarded one of statute's main purposes which was to ensure that crash victims receive medical assistance as soon as possible). Permitting someone to escape liability on the grounds that they deliberately closed their

eyes to knowledge there was an accident or on the grounds they were too voluntarily intoxicated to realize there was an accident would leave a loophole that would only encourage people to avoid knowledge and leave their victims unaided or would only reward someone for driving while intoxicated. The legislature could not have intended such a result and this Court should not adopt Respondent's and the Fourth District's interpretation of the statute and instructions. See City of St. Petersburg v. Siebold, 48 So. 2d 291, 294 (Fla. 1950)(courts will not ascribe to legislature an intent to create an absurd consequence so an interpretation avoiding absurdity is always preferred). Also cf., Salter v. State, 264 S.W.2d 719, 159 Tex. Crim. 482 (Tex. App. 1953)(lack of knowledge due to intoxication would constitute no defense).

Notably, in Dumas, 700 So. 2d at 1223, this Court rejected the contention that the State was required to prove that a driver had knowledge of the victim's death (as opposed to injury). The Court recognized that a fleeing driver's failure to stop and render aid could be the reason that an injured person dies and, further, requiring proof of knowledge of death could lead to an absurd result in that a driver who callously leaves the scene before the victim dies could avoid a conviction by disavowing knowledge of death. Clearly, this Court is concerned with avoiding absurd results in connection with this particular

statute. And, an absurd result would be the end product if this Court were to accept the position of the Fourth District that only actual knowledge of an accident is adequate. It is reasonable to read the statute to encompass situations where the defendant reasonably should have known, but for whatever reason, such as willful blindness, did not actually know of the accident. Given the circumstances, there was no error in giving the standard jury instruction because to do otherwise would lead to an absurd result.

In Com. v. Kauffman, 323 Pa.Super. 363, 470 A.2d 634, (Pa.Super. 1983), a case with instructive parallels to the instant case, the court, construing the Pennsylvania hit and run statute held that the duty to stop arises whenever a driver in the exercise of reasonable care should know that he has been involved in an accident. "To hold otherwise would advise drivers to remain oblivious, howsoever unreasonably, to the effects of their driving on fellow motorists." Kaufmann, 470 A. 2d at 640.

Even if the phrase "knew or should have known" was intended to replace or clarify the word "willful" for purposes of the jury instructions, it is the State's position that the use of the word "willful" still incorporates the concept that the respondent "should have known" of the accident. In State v. Mancuso, 652 So. 2d 370 (Fla. 1995), this Court addressed the statutory offense of leaving the scene of an accident. The Court

held that Section 316.027 required proof that the driver leaving the scene either knew of the resulting injury or death or reasonably should have known from the nature of the accident. As a result, the standard jury instruction was amended to include the element that the defendant knew or should have known. State v. Dumas, 700 So. 2d 1223, 1225 (Fla. 1997). This was true even though the statute at issue did not utilize the phrase "should have known."

Based on the logic of Mancuso, which interpreted the word "willful" in the statute to mean that the State must prove a defendant "knew or should have known" about an injury, it made sense to interpret the word "willful" in the statute to mean that the State must also prove a defendant "knew or should have known" about the accident itself. That is exactly why the standard jury instruction was crafted the way it was; it was crafted that way in light of Mancuso. In Re Standard Jury Instructions in Criminal Cases (95-2), 665 So. 2d 212 (Fla. 1995). And that is why this Court approved the standard jury instruction now at issue; it was crafted in response to Mancuso. In Re Standard Jury Instructions in Criminal Cases (95-2), 665 So. 2d 212 (Fla. 1995). The Fourth District acknowledged as much in the opinion below and at bar, when the court admitted that a quick review of Mancuso might suggest that the standard jury

instruction accurately reflects the law. Dorsett, 2013 WL 331602, at *5.

The Fourth District, however, in reaching the conclusion they did in Dorsett, that the law requires actual knowledge of the accident, cited a certain statement from this Court in Mancuso. Dorsett, 2013 WL 331602 at *3. The statement was from the following passage in Mancuso:

> This Court has previously determined that section 316.027 creates only one crime, the felony of "willfully" leaving the scene of an accident involving injury. Stanfill v. State, 384 So.2d 141, 143 (Fla.1980). **In reaching that determination, this Court implicitly recognized that knowledge of the accident is an essential element of section 316.027, for one cannot "willfully" leave an accident without awareness that an accident has occurred.**

Mancuso, 652 So. 2d at 371. (emphasis added). But, it must be emphasized that in this statement, willfulness goes to intent, and knowledge (expressed as "knew or should have known") goes to awareness of the accident, and by the same token, awareness of the injury. Thus, this language by this Court is not inconsistent with the State's position that knowledge of the accident encompasses not only the situation where the defendant had actual knowledge of the accident, but also the situation where the defendant reasonably "should have known" of the accident.

In this vein, it is helpful to know that the word "willful" has been employed by the United States Supreme Court to, among

other things, characterize conduct marked by a careless disregard whether or not one has the right so to act. United States v. Murdock, 290 U.S. 389, 394, 54 S.Ct. 223, 225, 78 L.Ed. 381 (1933). So, again and by the same token, willfulness in the instant case contemplates not only actual knowledge but situations where the defendant "should have known" that there was an accident or crash. Again, as a matter of public policy if nothing else, willful blindness or voluntary intoxication or the like should not be rewarded.

There is another consideration. The Fourth District, in Dorsett, distinguished Mancuso on the grounds that this Court only considered whether the law required that the defendant knew or should have known of the **injury** and did not consider whether the law required that the defendant knew or should have known of the **accident**. But, it must be noted that the instructions used by the trial court in Mancuso included the instruction that the defendant "knew or should have known" of the accident. Mancuso, 652 So. 2d at 371. This language was used by the trial court prior to this Court issuing the opinion in Mancuso. Although this Court did not expressly address the precise issue now before it, this Court implicitly approved that language, by 1) not only not disapproving it but actually extending it to require that the State also prove that the defendant "knew or should have known" of the injury and 2) by essentially

requesting and approving a new standard jury instruction based on Mancuso which incorporated this language. If this language was not what this Court wanted, this Court would have sent it back to the committee for further tinkering as this Court has done on other occasions. Therefore, the statement made by this Court that the Fourth District relies upon clearly has less import than the Fourth District ascribes to it. Again, the statement in question does not detract from the State's position.

Further, and while perhaps not dispositive as regards the question of law presented herein, it is significant that the evidence in the instant case clearly showed that the respondent had actual knowledge of the accident, and if not, that he was being willfully blind. At least one witness testified that there were several loud noises, first from the initial impact and then from the skateboard snapping as the truck driving over it. Witnesses reported hearing the noises from the third floor and the fifth floor of buildings near the intersection. One witness reported hearing the noise through a closed window and another reported hearing the noise through closed windows with music playing. Moreover, several witnesses testified that the truck **jumped** or moved as it went over the skateboard and then over the victim. And the police officer who pulled over testified as to Respondent's extreme nervousness (shaking, stuttering and so

on). The State submits it is clear Respondent actually knew of the accident. And, if Respondent did not actually know of the accident, then it is clear that Respondent was engaging in willful blindness in a panicked attempt to escape any potential liability.

Moreover, the standard jury instruction that was given did not reduce the State's burden of proof. The judge specifically instructed the jury that the State had to prove the four elements of leaving the scene beyond a reasonable doubt, including that the respondent knew or should have known of the accident. (R11 990) This, the State did.

In conclusion, the phrase "should have known" is not inconsistent with the term "willfully." Therefore, the standard jury instructions adequately stated the law. And there was evidence from which the jury could properly conclude Respondent had actual knowledge or was willfully blind to the accident. This Court must quash the decision of the Fourth District and reinstate Respondent's conviction for leaving the scene of an accident with injuries.

CONCLUSION

Based on the foregoing discussion, the State respectfully requests this Honorable Court quash the decision of the Fourth

District and reinstate Respondent's conviction for leaving the scene of a crash involving injury.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by E-MAIL on October 23, 2013:

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CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12 point font.

Respectfully submitted and certified,
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